

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF SCOTT

FILED

OCT 23 2009 A

FIRST JUDICIAL DISTRICT

Case Type: Mechanic's Lien Foreclosure

SCOTT COUNTY COURTS

In re M.W. Johnson Construction, Inc.
Mechanic's Lien Foreclosure Litigation

Consolidated Master Court File: 70-CV-09-7343

Judge: Jerome B. Abrams

Scott County Court File: 70-CV-08-12697

Wenzel Plumbing & Heating, Inc.,

Plaintiff,

vs.

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, ORDER FOR SUMMARY
JUDGMENT AND JUDGMENT**

M.W. Johnson, Construction, Inc.;
Keybank National Association;
Mortgage Electronic Registration
Systems, Inc., as nominee for Bell
America Mortgage, LLC, d/b/a Bell
Mortgage; Tollefson Development,
Inc.; Chandara Sengmany and Lorenzo
Rosas-Flores; Concrete Science
Services; XYZ Corporation; ABC
Partnership; John Doe and Mary Roe,
whose true names are to the Plaintiff
unknown,

Defendants.

The above-captioned matter came on for hearing before the undersigned Judge of District Court on August 5, 2009, pursuant to Plaintiff Wenzel Plumbing & Heating, Inc.'s ("Wenzel") Motion for Summary Judgment. Gary G. Fuchs, Esq. appeared on behalf of Wenzel. Steven R. Little, Esq. appeared on behalf of Defendants Chandara Sengmany ("Sengmany"), Lorenzo Rosas-Flores ("Rosas-Flores") and Mortgage Electronic Registration Systems, Inc., as nominee for Bell America Mortgage, LLC, d/b/a Bell Mortgage ("MERS"). The Court, having been fully

advised in the premises, together with all of the files and proceedings herein, makes the following:

FINDINGS OF FACT

1. This mechanic's lien foreclosure action involves certain real property located in Scott County, Minnesota, legally described as follows:

Lot 6, Block 29, Countryside

(the "Property").

2. Wenzel entered into a contract or series of contracts with M.W. Johnson Construction, Inc. under which Wenzel provided certain plumbing materials and labor for the improvement of the Property.

3. M.W. Johnson sold the Property to Sengmany and Rosas-Flores by way of a warranty deed dated June 21, 2007, recorded with the Scott County Recorder on July 11, 2007, as Document No. 777541. Sengmany and Rosas-Flores are the current fee owners of the Property.

4. MERS is the holder of a mortgage dated June 21, 2007, secured by the Property, given by Segmanay and Rosas-Floras, as mortgagors, in favor of MERS, as mortgagee, recorded with the Office of the Scott County Recorder on July 11, 2007, as Document No. 777542 (the "MERS Mortgage").

5. Wenzel recorded a mechanic's lien statement against the Property dated July 12, 2007, in the original principal amount of \$14,112.04, with the Office of the Scott County Recorder on July 16, 2007, as Document No. 777948 ("Wenzel's Mechanic's Lien Statement").

6. Wenzel's last item of improvement to the Property was June 7, 2007.

7. Wenzel commenced this action on May 29, 2008, within one year of its last item of improvement to the Property.

8. Wenzel's Mechanic's Lien is valid in the original principal amount of \$14,112.04 and is prior and superior to the rights, title and interests of Sengmany, Rosas-Floras and MERS in the Property.

9. Defendant Concrete Science Services, ("CSS") recorded a mechanic's lien statement against the Property dated August 8, 2007, with the Office of the Scott County Recorder on August 21, 2007, as Document No. 781141 ("CCS Mechanic's Lien Statement").

10. CCS failed to answer Wenzel's Complaint or otherwise appear in this action and has not commenced a separate action to foreclose its Mechanic's Lien.

11. More than one year has passed since the last item of improvement of May 16, 2007 that CCS claimed it provided for the improvement to the Property as set forth in its Mechanic's Lien Statement.

CONCLUSIONS OF LAW

1. Wenzel is entitled to summary judgment.

2. Wenzel's Mechanic's Lien against the Property is valid and enforceable in the amount of \$14,112.04 in principal, together with pre-judgment interest pursuant to Minn. Stat. § 514.135 in the amount of \$ 1439.42 through 10-20, 2009, which continues to accrue at the rate of \$ 1.55 per diem until entry of Judgment, together with attorneys' fees in the amount of \$ 4565.29 and costs and disbursements in the amount of \$ 711.24 for a total judgment of \$ 20,827.99.

3. Wenzel's Mechanic's Lien is prior and superior in all respects to Sengmany's, Rosas-Flores' and MERS's interests in the Property.

4. CCS's Mechanic's Lien is expired and is void and of no affect against the Property pursuant to Minn. Stat. § 514.012, subd. 3.

5. Wenzel's Mechanic's Lien shall be foreclosed and the Property sold by the Sheriff of Scott County, Minnesota at a public auction in the manner provided by Minnesota Stat. § 514.15.

6. The proceeds of said sale shall be applied first to the payment of costs and expenses of the sale and then to payment of the amounts adjudged to be due and owing to Wenzel with interest at the judgment rate provided herein from the date this judgment is entered to the date of said sale.

7. The sale shall be reported to and made subject to the approval of this Court. At that time, Wenzel may make application to the Court for an additional award of attorneys' fees and costs incurred in connection with the sale.

8. All the parties herein, and all persons claiming under them or any of them, shall be forever barred and foreclosed from any equity of redemption and all right, title and interest, lien or claim in the Property, except that Segnmany, Rosas-Flores and their legal representatives, successors, and assigns shall have the right to redeem the Property from said sale in accordance with Minn. Stat. § 514.15 within six (6) months from the date of the order confirming said sale and persons having junior liens, specifically the holder of the MERS Mortgage, shall therefore have such redemption rights as provided by statute for junior lienholders.

ORDER FOR JUDGMENT

1. Wenzel's Motion for Summary Judgment is hereby GRANTED.
2. There is no just reason for delay of entry of final judgment as provided herein, and the District Court Administrator is directed to immediately enter final judgment in accordance with these Findings of Fact and Conclusions of Law.
3. The Scott County Recorder shall accept a certified copy of these Findings of Fact, Conclusions of Law and Order for Judgment against the Property legally described in Paragraph 1 of these Findings

BY THE COURT:



Jerome B. Abrams
Judge of District Court
Court File Nos. 70-CV-09-7343
and 70-CV-08-12697

Dated: 10-21, 2009

JUDGMENT

I DO HEREBY CERTIFY THAT THE FOREGOING ORDER
CONSTITUTES THE JUDGMENT OF THIS COURT.

DATE 10-23-09
GREGORY M. ESS
COURT ADMINISTRATOR, SCOTT COUNTY, MINN.

DEPUTY Audreyk Brown